

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.MC.No. 2035 of 2007()

CP.83/2006 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR
CRIME NO. 366/05 of PATHANAPURAM POLICE STATION
.....

PETITIONER: ACCUSED

S.RAJU, S/O.SADANANDAN,
RAJU SADANAM, MANDIRAMUKKU, KAMUKUMCHERY,
PIRAVANTHOOR VILLAGE, PRESENTLY RESIDING AT
ATS QUARTERS, CHELARI, MALAPPURAM DISTRICT.

BY ADV. SRI.BIMAL K.NATH
SRI.S.JAMAL
SRI.E.M.SUNIL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. M.S. BREEZ, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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CrI.M.C.No. 2035 Of 2007
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Dated this the 26th day of June, 2007

ORDER

Petitioner faces indictment in a prosecution for offence punishable, interalia, under Section 307 IPC. According to the petitioner he had not received any notice of the proceedings. Reckoning him as absconding, warrant of arrest has been issued by the learned Magistrate. According to the petitioner he has never absconded. He had no information regarding the initiation of proceedings against him. He was enlarged on bail at the crime stage. He had informed the police about the change of address, but he was not informed about the initiation of prosecution against him. He is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C and/or 482 Cr.P.C may be issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

